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Disclosure of Records		

1. PURPOSE AND SCOPE

The purpose of the Disclosure of Public Records protocol is to provide a means of protecting and disclosing records shared between the Washington State Department of Ecology ("Ecology") and the United States Coast Guard, District 13 ("USCG") to the extent allowed by each agency's laws and rules.

If the scope of protection of information under Washington's Public Disclosure Act and the Federal Freedom of Information Act (5 USC 552) differ, and Ecology does not have the authority to exempt from disclosure information protected from disclosure *solely* by the Federal Freedom of Information Act, access to the information may be provided to Ecology; however, possession of such information cannot be granted where the possession of those documents by Ecology would result in public disclosure contrary to the mandates of FOIA.

Instructions and policies contained in this protocol apply to all records exchanged in compliance with any protocol developed to implement the Memorandum of Agreement on Oil Pollution Prevention and Response between the State of Washington and the Commander, Thirteenth Coast Guard District, executed on May 25, 2001.

2. AUTHORITIES AND REFERENCES

Memorandum of Agreement on Oil Pollution Prevention and Response, sections II, IV, V, VI, VII, VIII, and IX involve the sharing of records that may be subject to disclosure under applicable state and federal law.

Ecology

Statutes

RCW 42.17.010(11)	Declaration of Policy
RCW 42.17.020	Definitions
RCW 42.17.250 through 42.17.348	Public Disclosure
RCW 42.17.390	Civil remedies and sanctions
RCW 42.17.400	Enforcement

Regulations

WAC 173-03	Public Records
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Agency Policies

10-30	Responding to Requests for Ecology Records
10-30-01	Disclosing Public Records

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10-30-01a

Disclosing Ecology Public Records

USCG

Statutes

5 USC Sec. 552

Freedom of Information Act

5 USC Sec. 552(a)

Privacy Act

Regulations

49 CFR, Part 7

Public Availability of Information

49 CFR, Part 1520

Protection of Sensitive Security Information

Agency Policies

COMDTINST M5260.3

Freedom of Information Act and Privacy Act
Manual

COMDTINST M5510.23

Classified Information Management Program

COMDTINST M5510.22

Original Classified Authority

3. EFFECTIVE DATE AND POINTS OF CONTACT

This protocol will become effective upon the signature of both parties.

The following persons will serve as points of contact for questions concerning this protocol and its implementation:

Ecology

Enforcement Coordinator, Spills Program

Phone: (360) 407-7504

Fax: (360) 407-7288

Mailing Address: Washington Department of Ecology, Spills Program, P.O. Box 47600,
Olympia, Washington 98504-7600

USCG

Freedom of Information Officer, MSO Puget Sound

Phone: (206) 217-6251

Fax: (206) 217-6213

Mailing Address: Commanding Officer, USCG MSO Puget Sound, 1519 Alaskan Way
South, Building 1, Seattle, WA 98134-1192

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USCG

Freedom of Information Officer, MSO Portland

Phone: (503) 240-9312

Fax: (503) 240-9345

Mailing Address: Commanding Officer, USCG MSO/Group Portland, 6767 North Basin Avenue, Portland , OR 97217

4. DEFINITIONS

For the purpose of this protocol and actions taken under this protocol the following definitions apply:

- “Custodial agency” means the agency to which a request for public disclosure has been made under its respective laws, rules and policies.
- “Originating agency” means the agency that first created, received, solicited, or otherwise obtained the record.
- “Public record” means a record that is subject to disclosure under the Washington or U.S. law or rule.
- “Record” means a writing, drawing, map, recording, tape, film, photograph, digital file, computer file, or other means by which information is preserved.
- “State Record” as defined under Washington’s Public Disclosure Act, is any record in Ecology’s possession.

5. POLICIES

It is the policy of the USCG and Ecology to:

- Leverage their limited resources and provide efficiencies by sharing information to the maximum extent allowed by each agency’s respective laws, rules and policies.

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- Fully share records, facts and data that are historical, and do not contain preliminary opinions, notes, or other work product not cited in the final resolution of the matter.
- Prevent the unreasonable invasion of personal privacy to the maximum extent allowed by the respective law, rule and policy of each agency.
- Treat any record shared in the course of an investigation and marked “Sensitive Investigative Material” as sensitive investigative material that may not be disclosed without express consent by the originating agency while the custodial agency’s investigation is ongoing.
- Protect from disclosure any record compiled for law enforcement purposes if the investigation or proceeding involves a possible violation of criminal law, and there is reason to believe:
 - » The subject is unaware of the investigation; and
 - » Disclosure could reasonably be expected to interfere with enforcement proceedings.

It is the policy of Ecology to:

- Protect from disclosure any USCG record subject to privilege under federal or state law, or exempt from disclosure under Washington law or exempt from disclosure under federal law other than the Federal Freedom of Information Act (5 USC 552).
- Initiate the following procedure for requests for disclosure of any record that the USCG has requested to remain undisclosed:
 - » Notify the USCG point of contact as soon as possible after receipt of the request;
 - » Withhold disclosure until required to do so at the advice of the Office of the Attorney General or ordered to do so by Washington State’s Public Disclosure Commission.

It is the policy of the USCG to:

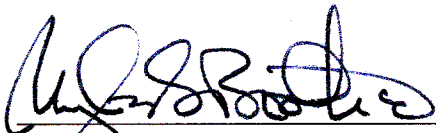
- Identify any federal privilege or law other than the Federal Freedom of Information Act (5 USC 552) that prohibits or limits disclosure of a record to Ecology.
- Identify any classified or Sensitive Security Information (SSI)* that cannot be shared with Ecology.

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*Sensitive Safety Information is a specific category of information that requires protection against indiscriminate handling. Release of SSI to Federal, state, or local enforcement officials, or to Federal intelligence agencies is permissible only when there is a written authorization signed by the originating office or program manager and agreement from receiving officials that the information may not be further disseminated without express written authorization or released to the public.

- Identify information provided by other Federal Agencies (e.g. Bureau of Customs and Border Protection (BCBP)) that may limit further dissemination, to determine the extent to which it can be shared with Ecology.
- Identify any information **not** exempt from public inspection and copying under RCW 42.17.310 but **is** exempt from disclosure under the Federal Freedom of Information Act, and consult with the FOIA officer to determine the extent to which it can be shared with Ecology. Access to the information may be provided to Ecology; however, possession of such information cannot be granted where the possession of those documents by Ecology would result in public disclosure contrary to the mandates of FOIA.

6. APPROVAL



M. S. BOOTHE
United States Coast Guard
Thirteenth Coast Guard District
Chief, Marine Safety Division



STAN NORMAN
Washington State Department of Ecology
Acting Spills Program Manager

DATE: 30 June 2003

DATE: 06/30/03

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Appendix A

RCW 42.17.310: Certain personal and other records exempt.

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a

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specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (i) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (ii) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under *RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to export projects pursuant to RCW 43.23.035.

(p) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses or residential telephone numbers of employees or volunteers of a public agency which are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are

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customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order.

(w)(i) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health, except this exemption does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations; (ii) the current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department, if the provider requests that this information be withheld from public inspection and copying, and provides to the department an accurate alternate or business address and business telephone number. On or after January 1, 1995, the current residential address and residential telephone number of a health care provider governed under RCW 18.130.040 maintained in the files of the department shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under RCW 42.17.260(9).

(x) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(y) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420.

(z) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(aa) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(bb) Financial and valuable trade information under RCW 51.36.120.

(cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030.

(dd) Information that identifies a person who, while an agency employee: (i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

(ee) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

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(ff) Business related information protected from public inspection and copying under RCW 15.86.110.

(gg) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW.

(hh) Information and documents created specifically for, and collected and maintained by a quality improvement committee pursuant to RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW 4.24.250, regardless of which agency is in possession of the information and documents.

(ii) Personal information in files maintained in a data base created under **RCW 43.07.360.

(jj) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010.

(kk) Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043.

(ll) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service. However, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides.

(mm) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons.

(nn) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety.

(oo) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310. If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the

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department of health shall continue to treat information designated under this section as exempt from disclosure. If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality.

(pp) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110.

(qq) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units.

(rr) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b).

(ss) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers supplied to an agency for the purpose of electronic transfer of funds, except when disclosure is expressly required by law.

(tt) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a liquor license, gambling license, or lottery retail license.

(uu) Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes.

(vv) Individually identifiable information received by the work force training and education coordinating board for research or evaluation purposes.

(ww) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(i) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(ii) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism.

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(xx) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data. However, this information may be released to government agencies concerned with the management of fish and wildlife resources.

(yy) Sensitive wildlife data obtained by the department of fish and wildlife. However, sensitive wildlife data may be released to government agencies concerned with the management of fish and wildlife resources. Sensitive wildlife data includes:

(i) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(ii) Radio frequencies used in, or locational data generated by, telemetry studies; or

(iii) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(A) The species has a known commercial or black market value;

(B) There is a history of malicious take of that species; or

(C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.